

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**JANUARY 5, 2000**

**IN RE:**

**JOINT APPLICATION FOR APPROVAL OF  
TRANSFER OF CONTROL OF ECLIPSE AND IXC  
COMMUNICATIONS TO CINCINNATI BELL, INC.**

**DOCKET NO. 99-00557**

---

**ORDER APPROVING TRANSFER OF CONTROL AND MERGER**

---

This matter came before the Tennessee Regulatory Authority ("Authority") on the Joint Application ("Joint Application") of Eclipse Telecommunications, Inc. ("Eclipse"), IXC Communications Services, Inc. ("IXC-CSI") and Cincinnati Bell, Inc. ("CBI") for approval of a transfer of control of Eclipse and IXC-CSI to CBI pursuant to Tenn. Code Ann. § 65-4-112. The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on September 14, 1999.

From the Joint Application and the record existing in this matter, the Authority has determined the following:

1. CBI requests that the Authority approve, pursuant to Tenn. Code Ann. § 65-4-112, the transfer of control of Eclipse and IXC-CSI as set forth in the Joint Application, and as further described below. CBI has entered into an agreement with IXC Communications, Inc. ("IXC"), the ultimate corporate parent of Eclipse and IXC-CSI, whereby IXC will be acquired by CBI in a merger transaction and will become a structurally separate, wholly-owned subsidiary of CBI. After the acquisition, both Eclipse and IXC-CSI will continue to operate under their own

**FILE**

authorizations, and will continue to provide telecommunications services to current customers under existing service arrangements.

2. CBI, an Ohio corporation, is a diversified telecommunications services holding company. CBI's subsidiaries offer a wide variety of telecommunications products and services such as local and long distance telecommunications services; directory services; data networking and transport; Internet access; digital wireless PCS; and e-commerce services. One of CBI's subsidiaries, Cincinnati Bell Long Distance Inc. ("CBLD"), currently operates as a reseller of intrastate interexchange services in Tennessee. On October 11, 1995, CBLD was certificated to provide telecommunications services in Tennessee by the Tennessee Public Service Commission ("TPSC") in Docket No. 95-03212.

3. Eclipse is a Delaware corporation that maintains its headquarters at 1122 Capital of Texas Highway South, Austin, Texas 78746-6426. Eclipse is a wholly owned subsidiary of IXC-CSI. Eclipse currently operates as a reseller of intrastate interexchange services in forty-eight (48) states, including Tennessee. On August 12, 1995, Eclipse was certificated to provide telecommunications services in Tennessee by the TPSC under the name Network Long Distance, Inc. in Docket No. 95-02659.<sup>1</sup> Eclipse also provides interstate and international telecommunications services pursuant to authority of the Federal Communications Commission ("FCC").

4. IXC-CSI is a Delaware corporation that maintains its headquarters at 1122 Capital of Texas Highway south, Austin, Texas 78746. IXC-CSI is a wholly owned subsidiary of IXC Communications, Inc., whose stock is publicly traded on the NASDAQ Stock Market. IXC-CSI currently provides intrastate interexchange services in forty-eight (48) states, including

---

<sup>1</sup> Network Long Distance, Inc.'s name change to Eclipse was approved by the Authority in Docket No. 98-00508.

Tennessee. On October 15, 1995, IXC was certificated to provide telecommunications services in Tennessee by the TPSC in Docket No. 95-03221, under the name IXC Long Distance, Inc.

5. To accomplish the acquisition described in the Joint Application, BCI has formed a wholly-owned subsidiary, Ivory Merger, Inc. ("Merger Inc."). At the closing of the proposed transaction, Merger Inc. will be merged with and into IXC. IXC will be the surviving corporation in the merger with Merger Inc., and the directors of Merger Inc. immediately prior to the effective time of the merger will constitute the new Board of Directors of IXC.

6. According to the Joint Application, the transfer of control of Eclipse and IXC-CSI to CBI will be made in a seamless fashion that will not adversely affect the provision of telecommunications services in Tennessee. Following consummation of the merger, Eclipse and IXC-CSI will continue to be wholly-owned subsidiaries of IXC. The day-to-day operations of Eclipse and IXC-CSI will not be affected adversely by the merger. Eclipse and IXC-CSI will continue to operate and will remain the holders of their authorizations. Eclipse's and IXC-CSI's current customers will not be affected adversely by the proposed acquisition. Eclipse and IXC-CSI will continue respectively to provide services to customers under existing service arrangements.

7. According to the Joint Application the transfer of control is in the public interest. The proposed transaction will bring together CBI and IXC to create a company operating subsidiaries that will be able to provide customers with the most technologically advanced and competitive services in the rapidly evolving telecommunications industry. Combining the resources and expertise of CBI and IXC will result in a financially stronger parent company for IXC-CSI and Eclipse, enabling them to strengthen their competitive positions in the interexchange marketplace in Tennessee and elsewhere. Further, according to the Joint

Application the proposed transfer of control will benefit the public interest by enhancing the ability of IXC-CSI and Eclipse to offer a full range of competitively priced services in the interexchange marketplace, thereby bolstering competition in Tennessee.

## **I. CRITERIA FOR APPROVING MERGER**

A merger between regulated public utilities is not valid until approved by the Authority under the provisions of Tenn. Code Ann. § 65-4-112. In addition, under Tenn. Code Ann. § 65-4-101, any entity that owns, operates, manages or controls utility systems, plant or equipment under certification by this Authority, or its predecessor, the Tennessee Public Service Commission, to provide utility service in the state of Tennessee is a public utility. Since this merger involves two entities holding certificates in Tennessee, Authority approval is required under the provisions of Tenn. Code Ann. § 65-4-112(a). This Section provides for the following:

(a) **No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority,** even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After consideration of the entire record in this matter, including the Joint Application, the Directors find and conclude as follows:

1. That the Authority has jurisdiction over the subject matter of the Joint Application pursuant to Tenn. Code Ann. § 65-4-112;
2. That the proposed transfer of control will be accomplished through a transaction whereby Elipse and IXC-CSI will merge with and into CBI;

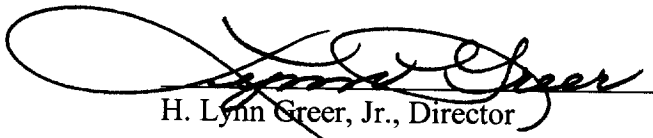
3. That Eclipse and IXC-CSI have been engaged in the business of providing telecommunications services in Tennessee; and

4. That based upon the foregoing, the merger and transfer of control is reasonable and compatible with the public interest and should be granted.


**IT IS THEREFORE ORDERED THAT:**

1. The Joint Application requesting approval of the merger of Eclipse Telecommunications, Inc. and IXC Communications to Cincinnati Bell, Inc is approved.

2. Any party aggrieved by the Authority's decision in this matter may file an Application for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

  
\_\_\_\_\_  
Melvin J. Malone, Chairman  
\_\_\_\_\_  
H. Lynn Greer, Jr., Director  
\_\_\_\_\_  
Sara Kyle, Director

ATTEST:

  
\_\_\_\_\_  
K. David Waddell, Executive Secretary